

February 13, 2014

Ms. Hilary Papendick
California Coastal Commission
c/o Sea-level Rise Work Group
45 Fremont Street, Suite 2000
San Francisco, CA 94105
E-mail: SLRGuidanceDocument@coastal.ca.gov

Re: California Coastal Commission
Draft Sea-Level Rise Policy Guidance
Response to Administrative Draft

Dear Ms. Papendick:

The Ventura County Resource Management Agency, Planning Division, is in receipt of the California Coastal Commission (CCC) Draft Sea-Level Rise (SLR) Policy Guidance. Ventura County also participated in the two webinars held on December 5 and 17, 2013, and followed the CCC hearing on December 12, 2013, and January 9, 2014, to listen to oral comments on the draft document. The Planning Division appreciates the opportunity to comment on the Draft SLR Policy Guidance. We recognize that this document will provide important direction for Ventura County when we are ready to prepare amendments to our Local Coastal Program (LCP) that address sea-level rise. We also recognize the importance of the SLR Policy Guidance document to the future processing of Coastal Development Permits (CDPs). Similar to the CCC, Ventura County believes that understanding SLR is an important issue that should be addressed in order to avoid future hazards and protect coastal habitats and other coastal resources.

During its review of the Draft SLR Policy Guidance, the Planning Division identified several issues, summarized below, that we recommend be addressed to avoid future problems and to more effectively implement the CCC document:

- *Guidance versus regulations:* Greater clarity is needed within the SLR Guidance Document to define its regulatory intent. The guidance was developed using 17 principles intended to guide sea-level rise adaptation efforts. These principles were derived from the Coastal Act and generally reflect the policies and practices of the CCC in addressing coastal hazards. In the absence of sea level rise certified policies in local LCPs, however, it appears that the SLR Policy Guidance has the same degree of authority as the Coastal Act. In our view, the CCC policy guidance should primarily be implemented through the LCP amendment process and should not be prematurely used to condition discretionary projects through the CCC appeal process.



- *Insufficient Funding:* While it is important that the SLR Guidance Document be implemented through the standard LCP amendment process, a lack of funding for that process will create significant implementation delays unless additional funding is made available.
- *New versus existing (or redevelopment) projects:* The SLR Guidance Document should more clearly distinguish between policies that apply to existing versus new development, consistent with the Coastal Act. In addition, the SLR Guidance Document should directly address the legal takings issue.
- *Expected project life/design life:* In our view, this is a complicated issue that should not be defined by the SLR Guidance Document. Other types of hazards (fire, earthquake, etc.) are addressed through the regulatory process without defining expected project life.
- *Regional Vulnerability Assessments and Adaptation Planning:* Except where necessary for critical infrastructure, the SLR Guidance Document should minimize requirements for inter-jurisdictional planning, as such requirements are likely to increase costs and timelines for LCP updates that address SLR.

The comments summarized above, which are listed in general order of priority, are further articulated below.

Guidance Versus Regulation

Ventura County requests that the SLR Policy Guidance document be updated to clarify how it will be used by the CCC to evaluate proposed development projects and proposed amendments to LCP documents. According to the CCC, the SLR Policy Guidance, which the CCC intends to adopt in April 2014, is not a regulatory document and does not directly govern the actions that the Commission or local governments may take under the Coastal Act. The Coastal Commission SLR Policy Guidance is rooted in 17 fundamental guiding principles, many of which derive directly from the requirements of the Coastal Act. The 17 principles are intended to guide sea-level rise adaptation efforts.

The SLR Policy Guidance document should be updated to clarify how it will be used by the CCC to evaluate proposed development projects and proposed amendments to LCP documents. Ventura County is concerned that the SLR Policy Guidance will have an immediate impact on proposed development projects as well as LCP amendments:

- Development Projects: When the 17 principles identified in the SLR Policy Guidance are reviewed against past actions taken by the CCC, it appears that 4 of the principles formed the foundation for the CCC's conditional approval of the City of San Buenaventura LCP Amendment for the Ventura Harbor mixed use development project (case no SBVMAJ-1-11). In its conditional approval, the CCC specified that the City of Ventura must provide a coastal hazard analysis that identifies sea level rise thresholds for future development. The City was

directed to consider best available scientific information in the preparation of findings and recommendations for all requisite geologic, geotechnical, hydrologic, and engineering investigations. The City also must substantiate the range of values that address coastal hazards and must require that all new structures in hazard areas be sited and designed to minimize destruction of life and property during likely inundation events.

Guidance for LCP updates (step 4) identifies two types of updates that are necessary to address sea-level rise: (1) policies and ordinances that apply to all development exposed to sea level rise, and (2) policies and land use changes to address specific risks in a particular portion of the planning area. The CCC action taken in the above circumstance goes against standard development review processes and procedures, which rely on adopted policies and regulatory language. In the absence of LCP policies and implementing development standards to address SLR, an applicant proposing a project along Ventura County's coastal zone is not required to provide an analysis on sea level rise and the County has no basis for adding conditions to a project that address sea level rise. The County is therefore concerned that coastal projects subject to discretionary review will now be subject to appeal by the CCC if they do not adequately address SLR.

- LCP Amendments: Ventura County is currently working on the second phase of a major LCP update that includes a variety of subject areas. Those subject areas are defined by a grant-funded work program prepared in 2009, and sea-level rise is not a major topic area listed in the scope-of-work for this LCP update. Due to mandated deadlines as well as limited funding, the six steps to address SLR will not be accomplished during this particular LCP update. Our concern is that the CCC will reject the entire amendment if SLR is not addressed in a matter that is acceptable to CCC staff.

In our view, the SLR Policy Guidance should be modified to clarify how the CCC will use the document during its review of development projects as well as LCP amendments. Additional clarification language should be added to provide private landowners and developers with some level of certainty about how proposed development projects will be reviewed and conditioned by the CCC. Additional clarification language should also be added to provide clarity to public agencies that are currently processing LCP amendments. Once the SLR Policy Guidance is adopted, will the information translate to regulations? Will the CCC appeal LCP amendments and CDPs if they do not incorporate the CCC SLR adaptation planning processes for LCPs and CDPs as noted in the SLR Policy Guidance?

Insufficient Funding

If adoption of the SLR Policy Guidance results in short-term impacts to development projects and LCP amendments, as described previously, then the lack of funding available to update LCP programs in response to that guidance becomes a major issue

of concern for coastal California jurisdictions. Updates to LCPs are a significant and costly undertaking for local governments. LCP amendments that address sea-level rise, in particular, will be expensive as they will rely on the review and application of complex technical data to a wide variety of on-the-ground conditions. LCP amendments that address sea-level rise will also be expensive as they rely on long-range forecasts and conditions that change dramatically over time.

In 2013, the following three grant programs were announced to assist local governments to develop SLR policies and development standards. As shown below, a total of \$5 million was available to fund \$12 million requested by grant applications to update LCPs to address SLR:

- (1) CCC LCP Assistance Grant: These grants provided a total of \$1 million in available funds, and the CCC received 28 applications requesting funding totaling over \$5.2 million. A number of grants awarded through this program did not focus on sea-level rise.
- (2) Ocean Protection Council's (OPC) LCP Sea-Level Rise Grant Program: This program provided a total of \$2.5 million in available funds. The OPC received 18 applications requesting a total of \$3.8 million and seven projects were recommended for funding, for a total of \$1.3 million. A second round of the grant program will be announced in 2014 to distribute the remaining funds.
- (3) State Coastal Conservancy's Climate Ready Grant Program: This program provided a total of \$1.5 million in available funds. According to the Coastal Conservancy's top ranked projects, there were 20 applications that, when combined, requested nearly \$3 million.

In the case of the LCP Planning Grant program, jurisdictions that received grant awards often had extensive in-kind funds. For example, Marin County was selected and awarded \$54,000 in part because the CCC considered their proposal to have a high likelihood of success due to nearly \$3 million in in-kind funds from a variety of funding sources.

Financial assistance has been, and will continue to be, critical for the 76 coastal counties and cities responsible for the preparation of coastal plans and processing of coastal permits.¹ Using Marin County as an example, if a rough estimate is made that incorporating SLR into LCPs generates a cost of approximately \$3 million per jurisdiction, then it could cost \$228 million to update LCPs to address sea-level rise. When compared to currently available funding, it becomes clear that far more funding will be needed to successfully incorporate the six step process defined by the Coastal Commission's SLR Policy Guidance into LCPs. Without additional funding sources, we believe it is unlikely that the majority of coastal agencies will undertake LCP updates that address SLR in the near future. Considering this likelihood, it is unclear what tools local agencies will have to require or facilitate project reviews that address SLR.

¹ In addition, non-governmental organizations compete for grant funds.

Expected Project Life or Design Life

The SLR Policy Guidance suggests that a minimum of 75 to 100 years should be considered as the design life for primary residential or commercial structures. The expected or proposed project life would be used to determine the amount of sea-level rise to which the project site could be exposed during the lifetime of that particular development. Ventura County recommends that project life or design life be removed from consideration by the SLR Policy Guidance, as the project life is not typically defined for other types of projects proposed in high-hazard areas.

Another reason to eliminate expected project life or design life from the SLR Policy Guidance is because project life is difficult to determine. Also, it is not clear how the CCC established the 75 to 100 year design life. Predictions for building life-spans are extremely rough estimates, and one estimation technique is based on the type of construction:

- Temporary: 0-5 years
- Semi-permanent: 5-25 years
- Permanent: over 25 years.

Other methods utilize tables of the expected life of building components or various material types. Architects and engineers, for example, may select particular building materials/components based upon the expected life of the project. Many factors affect the life expectancy of building components, including the quality of the component, quality of installation, level of maintenance, weather and climatic conditions, and intensity of use. If there are no cost constraints, maintenance and repair activities can indefinitely extend the physical life of the structure.

It is unclear why the CCC wants local governments to define project life expectancy, and it is also unclear how this information would be used during the regulatory review process. Life expectancy for a project is generally not considered during permit reviews, although beach front communities currently are exposed to damage from storms and high waves. Similarly, buildings and structures in high fire hazard areas are at risk from wildfire and the loss of private property is a consequence of building in high-risk areas. Nevertheless, life expectancy is not assigned to a structure in a high fire hazard area and, if it is destroyed, the property owner absorbs the cost to rebuild or replace the structure in a location with fewer hazards.

As an alternative to requiring the lead agency to determine life expectancy for primary residential and commercial structures, the SLR Policy Guidance should discuss the life expectancy of seawalls and the CCC's position on maintenance and repair of seawalls that protect primary residential and commercial structures and that effectively determine the life expectancy of a structure subject to flooding from sea level rise.

New versus Existing (or Redeveloped) Property

The SLR Policy Guidance should more clearly distinguish between existing and new development and should also address legal takings issues. Currently, the SLR Policy Guidance does not provide different guidance for existing versus new development. Nor does the document describe how local government or the CCC will resolve disputes that involve private property rights and takings issues. Instead, the SLR Policy Guidance includes a recommendation that local agencies obtain legal advice regarding specific situations that raise takings concerns.

At a minimum, the SLR Policy Guidance should be updated to address the following sections of the Coastal Act, which distinguish existing versus new development:

- Coastal Act Section 30235 states “Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.”
- Coastal Act Section 30253 states “New development shall... neither create nor contribute significantly to erosion... or in any way require the construction of protective devices that would substantially alter landforms along bluffs and cliffs.”

The difference between Sections 30235 and 30253 are the words “existing” versus “new” development. The Coastal Act requires the Commission to protect existing structures; it does not require the Commission to approve new development placed in a hazardous area.

At the December 12, 2013, CCC hearing, Commissioner Zimmer noted that every month the CCC is presented with a request to approve a seawall or an emergency seawall that conflicts with the draft SLR Policy Guidance document. She expressed her concern about how the Commission will handle these types of projects. She also suggested (and we agree) that the SLR Policy Guidance should include a section that discusses legal challenges associated with seawalls and that describes how previous court cases and legal opinions should be used to interpret the discretionary power the Commission retains. Furthermore, additional specificity in Appendix C, Adaptation Measures, should be included that reflect strategies that the Commission has found acceptable in this context.

Commissioner Zimmer’s request reflected a similar point made by Commissioner Shallenberger that the SLR Policy Guidance does not address “vulnerable communities”-that is, communities that do not have the ability to adapt or respond to emergencies. Ventura County’s existing beach communities, for example, do not have the luxury to relocate or to modify their residences in any significant way to reduce flooding or other risks associated with SLR. It is therefore likely that residents will request that seawalls protecting their property be reinforced. In the absence of a clear

interpretation of Section 30235 through the legislature, the issue of seawalls will continue to be litigated.

The SLR Policy Guidance recommends that local jurisdictions' limit the expansion of non-conforming or other uses in hazardous areas and require projects with significant exterior and/or interior alterations of non-conforming structures to bring the entire structure into conformity with current requirements regarding avoidance and minimization hazards. Consistent with this recommendation, the Ventura County Building Code (2010 Edition) Section 45.3.4.4 states that when the estimated value of repair is 50% or more of the replacement value of the structure, the entire structure shall be brought into conformance with the fire and life safety and structural requirements of the current code. What is not clear, however, is what regulatory standard should be used to reflect the SLR Policy Guidance in such situations prior to the point when a Zoning Ordinance or other implementation document is updated to reflect the SLR Policy Guidance. It also is not clear what should occur when a property owner wants to demolish and rebuild a primary residence.

Regional Vulnerability Assessments and Adaptation Planning

Principle No. 12 and No. 16 suggest that local governments conduct vulnerability assessments and adaptation planning at the regional level. To accomplish this, the local government would evaluate SLR impacts throughout an entire littoral cell or watershed, determine how those impacts affect the LCP jurisdiction or project, and recommend adaptations that minimize impacts generated by sea-level rise.

Inter-jurisdictional planning and cooperation is needed to minimize SLR impacts to infrastructure or natural resources that span multiple jurisdictional boundaries. However, although there may be benefits associated with addressing cumulative impacts on a regional basis, the SLR Guidance document is unclear when it describes a study that includes "regional impacts and any cumulative impacts within a larger planning context in a LCP or other larger-scale analysis."

At the December 12, 2014 CCC hearing, Commissioner Brian Brennan suggested that the coast be subdivided by littoral cell. Commissioner Brennan also suggested that the discussion on regional SLR impacts be extended outside the Coastal Zone because sand and sediment originates from the inland areas. The Santa Barbara Littoral Cell extends from Point Conception to the Mugu submarine canyon, and it contains a complete cycle of sedimentation including sand sources that provide sand to the shoreline, sinks where sand is lost from the shoreline, and transport paths on the shoreline along which the sand moves. There is evidence that shoreline and bluff erosion are impacting beaches along this littoral cell. Coastal change in the Santa Barbara Littoral Cell region is complicated by the irregular coastline, variability in wave forces, structures such as harbors, groins, piers, dams and urbanization, and limited information on littoral sediment sources.

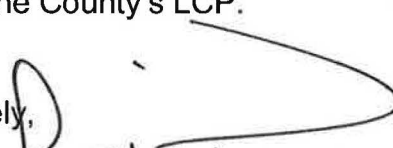

Evaluating the dynamic characteristics of SLR and how that will influence the Santa Barbara Littoral Cell region is a considerable endeavor and, while augmenting this analysis with sediment sources originating from Ventura and Santa Barbara County's watersheds is an important piece, a comprehensive investigation such as this would take a considerable amount of resources. As stated previously, unless more funding is made available that specifically focuses on SLR, conducting a regional study of the Santa Barbara Littoral Cell is unlikely and should not be expected of local jurisdictions that attempt to update their LCPs to address SLR.

Conclusion

Ventura County appreciates this opportunity to comment on the SLR Policy Guidance document. All local jurisdictions will continue to rely on the engagement of the CCC and its staff for guidance on SLR. The CCC Draft SLR Policy Guidance is an important step in the process of creating new policies and regulations that effectively address SLR. However, as noted in the comments provided in this letter, we recommend that the CCC provide additional information in the SLR Policy Guidance document that clearly defines, and limits, the regulatory intent and impact of the document. Instead, we recommend that local jurisdictions be provided adequate time to assess and implement the SLR Policy Guidance document through a standard LCP amendment process. We also recommend that the CCC make additional funds available for LCP updates that address SLR, as the ability of local jurisdictions to address SLR will be limited unless additional funding is made available.

Thank you for this opportunity to provide comments from the Ventura County Planning Division. We look forward to future work with the CCC and its staff to address SLR within the County's LCP.

Sincerely,



Kim Prillhart, Planning Director
Ventura County Resource Management Agency

Cc: Chris Stephens, Resource Management Agency Director
Rosemary Rowan, Long Range Planning Manager